

REMARKS

By this Office Action, the Examiner has required restriction to one of the following inventions under 35 U.S.C. §121:

- Group I. Claims 1-15 and 23-27 drawn to a method to populate a solid surface with human cells via enhancing cell to cell cohesion, classified under Class 435, subclass 395 for example.
- Group II. Claims 16-20 drawn to a composition, i.e., a cell-coated solid surface, classified under Class 435, subclass 325 for example.
- Group III. Claims 21-22 drawn to another composition, i.e., cell population, classified under Class 435, subclass 366 for example.
- Group IV. Claims 28-33 drawn to a method to populate a solid surface with non-human cells, classified under Class 435, subclass 363 for example.
- Group V. Claim 34 drawn to a method to determine phosphorylation, classified under Class 435, subclass 375 for example.

Responsive to the Requirement for restriction, Applicants elect to prosecute the invention of Group I, with traverse, Claims 1-15 and 23-27, which are drawn to a method to populate a solid surface with human cells via enhancing cell to cell cohesion, classified under Class 435, subclass 395 for example.

Applicants respectfully request reconsideration of the Requirement for Restriction, or in the alternative, modification of the Restriction Requirement to allow prosecution of more than one group of Claims designated by the Examiner in the present Application, for the reasons provided as follows.

Under 35 U.S.C. §121 "two or more independent and distinct inventions ... in one Application may ... be restricted to one of the inventions." Inventions are "'independent'" if "there is no disclosed relationship between the two or more subjects disclosed" (MPEP 802.01).

The term "'distinct'" means that "two or more subjects as disclosed are related ... but are capable of separate manufacture, use or sale as claimed, AND ARE PATENTABLE OVER EACH OTHER" (MPEP 802.01) (emphasis in original). However, even with patentably distinct inventions, restriction is not required unless one of the following reasons appear (MPEP 808.02):

1. Separate classification
2. Separate status in the art; or
3. Different field of search.

Further, under Patent Office Examining Procedures, "[i]f the Search and Examination of an entire Application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions" (MPEP 803, Rev. 8, May 1988) (emphasis added).

Applicants respectfully submit that the groups designated by the Examiner fail to define methods with properties so distinct as to warrant separate Examination and Search. Claims 28-33 of Group IV are drawn to a method to populate a solid surface with non-human cells, which is fundamentally related to Claims 1-15 and 23-27 of Group I, drawn to a method to populate a solid surface with human cells. The search for any of the methods separately classified by the Examiner as the invention of Group IV would require an additional search of the identical classes wherein the claims of Group I are classified, thus resulting in a duplicate search for the same material. In short, the methods of the claims of Group I and Group IV basically differ with respect to the origin of the cells used in the method. The method is essentially the same. Thus, Applicants submit that the Search and Examination of the entire Application, or, at least, of Group IV with Group I can be made without serious burden, and therefore the Examiner should examine all of the claims of the Application on the merits.

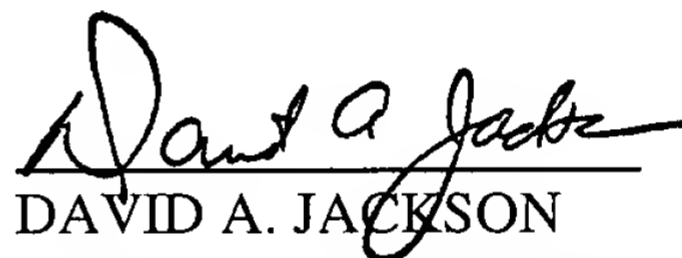
The Examiner's assertions to the contrary notwithstanding, Applicants respectfully submit that conjoint examination and inclusion of all of the Claims of the present Application would not present an undue burden on the Examiner, and accordingly, withdrawal of the

Requirement for Restriction, or, at the least, modification to include the Claims drawn to Group I and Group IV is in order.

No fees are believed to be necessitated by the foregoing Response. However, should this be erroneous, authorization is hereby given to charge Deposit Account No. 11-1153 for any underpayment, or credit any overages.

In view of the above, withdrawal of the Requirement for the Restriction is requested, and an early action on the merits of the Claims is courteously solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David A. Jackson", is written over a horizontal line.

DAVID A. JACKSON
Attorney for Applicant(s)
Registration No. 26,742

KLAUBER & JACKSON
411 Hackensack Avenue
Hackensack, New Jersey 07601
(201) 487-5800

Date: July 26, 2004